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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,572	04/21/2004	Steven A. McAuley	1001.1704101	5285

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CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

EXAMINER

BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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06/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/828,572

Applicant(s)

MCAULEY ET AL.

Examiner

Laura A. Bouchelle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-20 and 22-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-20 and 22-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1, 9, 11, 12, 29-32, 33, 34, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Termin et al (US 5221261). Termin discloses a radially expandable fixation member comprising a catheter 80 having an inflation lumen 88, a guidewire lumen, and a balloon 82 having an expandable region that contacts a blood vessel wall during the use of the balloon (Col. 7, line 60- Col. 8, line 6); a traction member 90 coupled at the first end 92 of the member and free at the second end, the traction member conforms with the expandable region of the balloon (Col. 8, lines 1-6).

3. Claims 25-28, 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Meyer et al (US 7186237). Meyer discloses a balloon catheter having a catheter 22, a balloon 46, a guidewire 39, and a traction member 61. The traction member is coupled to the shaft at the proximal and

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distal ends. The traction member includes a plurality of nonwoven wires and is adapted to grip the interior surface of a vessel.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 9, 10, 11,12,13, 14, 22-24, 29-32, 35, 36, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer in view of Termin. Claims 1, 13, 29, 35, 36 differ from Meyer in calling for the proximal end of the traction member to be unattached to the catheter. Termin teaches a balloon catheter having a traction member that can either be attached at the proximal end (Fig. 5) or free at the distal end (Fig. 9) because either configuration allows the traction member to expand and engage the interior walls of the vessel. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Meyer so that the proximal end of the traction member is unattached to the shaft as taught by Termin because such a modification would have been an obvious matter of design choice.

6. Claims 22-24, 30-32 differ from the teachings above in calling for the traction member to extend to a proximal waist, a midpoint, or a distal waist of the balloon. At the time the invention was made, it would have been an obvious matter of design choice to have the proximal end of the traction member at any of these locations. Applicant has not disclosed that the location of the proximal end of the traction member serves any advantage or particular purpose or solves a

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stated problem. Furthermore, one of ordinary skill would expect Termin or Meyer and applicant's invention to perform equally well with the proximal end of the traction member at any location. Therefore, it would have been prima facie obvious to modify Termin of Meyer to obtain the invention as specified in claims 22-24, 30-32 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art.

7. Claims 2, 3, 4, 7, 15, 16, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer or Termin in view of Bradshaw (US 6450988). Claims 2, 3, 4, 7, 15, 16, 17, 20 differ from the Meyer and Termin in calling for the gripping surface to be defined by bumps, a helical region, a ridge, or undulations. Bradshaw discloses a balloon catheter, wherein the balloon comprises a region of helical lobes 26 with protruding knobs 30 that engage the vessel wall to prevent the balloon from becoming dislodged from the site within the vessel (Col. 4, lines 40-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the gripping member of Meyer or Termin to be of a helical shape or have bumps as taught by Bradshaw so that the member can engage the wall of the vessel to prevent the balloon from becoming dislodged.

8. Claims 4, 5, 6, 17, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer or Termin in view of Grayzel et al (US 2002/0010489). Claims 4, 5, 6, 17, 18, 19 differ from the Meyer and Termin in calling for the gripping surface to be defined by a ridge along the body portion, saw tooth projections or spikes. Grayzel discloses a balloon catheter comprising gripping member in the shape of a ridge 46 or alternatively in the shape of saw tooth projections

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500 or spikes. See Figs. 2 and 9G. These configurations engage the target lumen as the balloon expands to retain the balloon in the lumen (Page 4, paragraph 0053). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the gripping surfaces of Meyer or Termin to be either a ridge, saw tooth projections, or spikes as taught by Grayzel to retain the balloon in the lumen.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 9-11,13,14,22-25,25-27,29-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Laura A Bouchelle
Examiner
Art Unit 3763

